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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1933

No. 370

HOME BUILDING AND LOAN ASSOCIATION,
A CORPORATION, APPELLANT,

vs.

JOHN H. BLAISDELL AND ROSELLA BLAISDELL,
HIS WIFE, APPELLEES.

STATEMENT AS TO JURISDICTION ON APPEAL.

May it please the Court:

The appellant, Home Building and Loan Association, a corporation, in support of the jurisdiction of this Court to review the above entitled cause on appeal, respectfully represents:

A.

Statutory Provision Sustaining Jurisdiction.

Section 237 of the Judicial Code, as amended (28 U. S. C. A., Sec. 344) provides in part as follows:

"SEC. 237 (amended). Appellate Jurisdiction of decrees of State Courts.—

"(*a*) A final judgment or decree in any suit in the highest court of a State in which a decision could be

had, where is drawn in question * * * the validity of a statute of any State on the ground of its being repugnant to the Constitution * * * of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error [now appeal]. * * *"

B.

Statute Involved.

The statute so drawn in question herein, is Chapter 339 Laws of Minnesota, 1933, page 514. Appellant claims that said statute is repugnant to and violates the following provisions of the Constitution of the United States: (1) The contract clause, Art. I, Sec. 10; (2) The due process clause of Amendment XIV; and (3) The equal protection of the laws clause of Amendment XIV.

C.

Date of Decree and Date of Application for Appeal.

The decree sought to be reviewed was entered by the Supreme Court of the State of Minnesota on the 28th day of July, 1933 (R. 97)*, affirmed per curiam on basis of prior decision, — Minn. —, 249 N. W. 334.

The application for appeal was presented on the 11th day of August, 1933 (R. 99).

D.

Nature of Case and Ruling Below.

The record shows conclusively both by the pleadings and stipulation of counsel, the following facts (R. 89 to 93; see

*Footnote.—All references to the record are to the pages of the certified unprinted record prepared for the Clerk of the Supreme Court of the United States by the Clerk of the Supreme Court of Minnesota and on file with the Clerk of this Court. The record has not yet been printed.

also R. 3 to 5, 19–20): That appellant is a corporation organized and existing under the laws of Minnesota. That on April 18, 1933, when Chapter 339, laws of Minnesota, 1933, page 514, was enacted and approved, the parties to this appeal were parties to a lawful, subsisting contract arising out of a loan of money by appellant to appellees. The loan was secured by a mortgage on certain real estate in Minneapolis owned by appellees, which is stipulated to be worth Six Thousand Dollars ($6,000) at the present time (R. 92). The mortgage was in form, that commonly used in Minnesota, and contained the usual provisions for foreclosure by advertisement, and provided also, by operation of law, for a redemption period of one year from date of such foreclosure sale, if any. That the mortgage had been duly foreclosed on May 2, 1932, and sold on execution to appellant, for the full sum of its loan, interest and costs, viz: Thirty-seven Hundred and 98/100 Dollars ($3,700.98). That in addition thereto, and pursuant to the authority conferred by the terms of the mortgage contract, and by existing statutes, the appellant paid out for taxes, insurance premiums and other necessary expenses, the further sum of Three Hundred Fifty-five and 31/100 Dollars ($355.31), making a total of Four Thousand Fifty-six and 39/100 Dollars ($4,056.39) paid by appellant for said property. There is also unpaid on said property the second half of the 1932 taxes in the sum of One Hundred Sixteen and 53/100 Dollars ($116.53). That there is therefore no question of a deficiency judgment involved herein (R. 91). That the period of redemption would expire on May 2, 1933 (R. 3, 19, 91). That but for Chapter 339, the appellant on that date would have been entitled to immediate possession of the property and to title thereto free and clear of any claim of appellees.

That Chapter 339 is expressly made "emergency" legislation and attempts to create a two-year moratorium on

real estate mortgages in Minnesota. Among other things the Act provides: (1) that at the option of the mortgagor, all foreclosures by advertisement may be converted into foreclosures by action in the court; (2) that mortgage foreclosures during the two-year period shall be prevented, delayed or granted on terms acceptable to the courts at the option of the mortgagor; (3) that redemption period from prior mortgage foreclosure sales, expiring less than thirty (30) days after the passage of the Act, (as in the instant case) were extended, arbitrarily and without intervention by the parties or by the courts, to May 18, 1933; (4) that at the option of the mortgagor, the redemption period from mortgage foreclosures already had may be extended to May 1, 1935; and (5) during said period, deficiency judgments may not be taken, and those already taken may not be enforced until after May 1, 1935; and (6) that suits to realize on any debt secured by a real estate mortgage is prevented during the two-year period, because the Act authorizes the courts, at the option of the mortgagor, to stay until May 1, 1935, the execution of any such judgment obtained either before or during said period.

That in the instant case, the mortgage having been foreclosed, the appellees, by petition in the trial court, sought and obtained judgment for benefits under the Act, namely, the extension of the redemption period from May 2, 1933, to May 1, 1935. The appellees thus obtained, in addition to the one year agreed by the parties, a further redemption period of just one day less than two years, during which time the appellant has been and will be deprived of its property rights. That the trial court, pursuant to said Act, and being bound by the prior determination of the validity of the Act by the Supreme Court of the State made in the prior appeal (— Minn. —, 249 N. W. 334), granted said extension (R. 76, 94).

The appellant was thus, in fact, deprived of its rights under the contract, and the terms of the contract were thus changed, not by mutual consent of the parties, but solely by virtue of the Act. Appellant claims that these facts constitute, in law, an impairment of the obligation of a contract by a statute of a State. That the State of Minnesota has by Chapter 339 impaired the obligation of this appellant's contract, in violation of the contract clause, Art. I, Sec. 10, of the Federal Constitution. Appellant claims, too, that these facts also constitute a taking of its property without due process of law in violation of the due process of law clause of Amendment XIV of the Federal Constitution. Appellant claims further, that these facts constitute a denial to it of the equal protection of the laws clause of Amendment XIV, in that appellant stands in the position of a creditor of a mortgage debt and is subjected to the moratorium in Chapter 339, whereas creditors in other forms of indebtedness are not subjected to the same or similar moratorium.

The judgment of the trial court was affirmed by the Supreme Court of the State of Minnesota, notwithstanding appellant's objections as aforesaid, which were urged on both trial court and on the supreme court throughout the entire proceedings below (R. 6, 47, 48; see also: trial court, R. 8, 11; appellee, R. 10; S. Ct. 18, 97). The present appeal is from the final judgment of the Supreme Court of the State of Minnesota, entered on July 28, 1933, sustaining the validity of Chapter 339.

All of which facts, appellant now submits, brings the case within the jurisdiction, on appeal, of this Court.

E.

Cases Believed to Sustain the Jurisdiction.

Louisiana R. & N. Co. v. *Behrman* (1914), 235 U. S. 164, 35 S. Ct. 62, 59 L. Ed. 175.

New York E. L. Co. v. *Empire City Subway Co.* (1914), 235 U. S. 179, 35 S. Ct. 72, 59 L. Ed. 184

Levy Leasing Co. v. *Siegel* (1922), 258 U. S. 242, 42 S. Ct. 289, 66 L. Ed. 595.

Appleby v. *City of New York* (1926), 271 U. S. 364, 46 S. Ct. 569, 70 L. Ed. 992.

Fiske v. *Stone* (1927), 274 U. S. 380, 47 S. Ct. 655, 71 L. Ed. 1108.

Miller v. *Schoone* (1928), 276 U. S. 272, 48 S. Ct. 246, 72 L Ed. 568.

New York v. *Zimmerman* (1928), 278 U. S. 63, 49 S. Ct. 61, 73 L. Ed. 184.

Shriver v. *Woodbine Sav. Bank* (1932), 285 U. S. 467, 52 S. Ct. 430, 76 L. Ed. 884.

Advance Rumely T. Co. v. *Jackson* (1932), 287 U. S. 283, 53 S. Ct. 133, 77 L. Ed. (Adv. Op. 192).

Anglo-Chilean N. S. Corp. v. *Alabama* (1933), 288 U. S. 218, 53 S. Ct. 373, 77 L. Ed. (Adv. Op. 451).

Ligget Co. v. *Lee* (1933), 288 U. S. 517, 53 S. Ct. 481, 77 L. Ed. (Adv. Op. 553).

Consolidated Textile Corp. v. *Gregory* (1933), 289 U. S. 85, 53 S. Ct. 529, 77 L. Ed. (Adv. Op. 750).

Young v. *Masci* (1933), 289 U. S. 253, 53 S. Ct. 599, 77 L. Ed. (Adv. Op. 767).

We respectfully submit that this Court has jurisdiction of this appeal by virtue of subdivision (*a*) of Section 237 of the judicial code, as amended.

Respectfully submitted,

ALFRED W. BOWEN,
Counsel for Appellant.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1933

No. 370

HOME BUILDING AND LOAN ASSOCIATION, A CORPORATION, APPELLANT,

vs.

JOHN H. BLAISDELL AND ROSELLA BLAISDELL, HIS WIFE, APPELLEES.

MOTION TO ADVANCE CASE FOR ARGUMENT AND TO INCREASE ALLOWANCE OF TIME OF ARGUMENT.

Comes now the appellant and respectfully moves this Honorable Court for an order advancing this case for early hearing, and for additional time for argument not to exceed a total of two (2) hours, and in support of its motion, the appellant makes the following brief statement of the matter involved and the reasons relied upon therefor:

A.

Statement of Matter Involved.

In order to save space and the time of the court, the facts will not be repeated in detail at this point, because they are set out in subdivision D of the statement of juris-

diction filed with the clerk of this Court. Appellant states briefly, however, that this case involves the validity of certain "emergency" legislation of the State of Minnesota, namely, the so-called "Mortgage Moratorium Law," being Chapter 339, Laws of Minnesota, 1933, page 514. That the parties to this appeal were respectively mortgagee and mortgagor in a real estate mortgage which had been duly foreclosed by advertisement by the appellant on default of the appellees. That but for Chapter 339, appellant would have had the right to immediate possession of the premises involved on May 2, 1933, and to title thereto, free and clear of any claim of the appellees. That Chapter 339 arbitrarily extended, in the instant case, the time for redemption from the foreclosure sale from May 2, 1933, to May 18, 1933, and that under the further provisions of Chapter 339, appellees sought and obtained further extension of the redemption period from May 18, 1933, to May 1, 1935. That the appellant claimed at all times below that said Act was unconstitutional, but nevertheless, the Supreme Court of the State of Minnesota held the Act to be valid.

B.

Reasons Relied Upon.

The appellant relies on the following reasons to sustain its motion to advance the case for hearing and for additional time for argument:

1. Importance of Questions Involved.—The case presents an important issue of law, in addition to the Federal questions arising under the contract clause of the Federal Constitution and the due process of the law clause and the equal protection of the laws clause of Amendment XIV thereof; namely, the extent and exercise of the police power of the State in times of economic depression.

2. Nature of Statute Challenged.—Chapter 339 so challenged as being unconstitutional is an attempt by the State of Minnesota to exercise its police power under such conditions and is attempted to be exercised for the purpose of aiding that class of debtors, who have given real estate mortgages as security for the debt, and the Act attempts to do so by declaring and creating a two-year moratorium on all such debts.

3. Status of Chapter 339.—That the validity of Chapter 339 is, at the present time, in doubt becaues of the Constitutional objections urged in this case and now presented to this Honorable Court for determination, because this Court is the final authority on the questions involved. That the validity of similar "emergency" legislation of many other States of the Union is likewise in doubt.

4. Speed has characterized the enactment of Chapter 339, and all of the proceedings hereinbelow. It is apparent from the matter immediately following in this paragraph that not only the parties hereto, but the trial court and the Supreme Court of the State of Minnesota appreciated the importance of this case, and its character as a test case, and above all this, the necessity for settling the questions involved so as to determine the validity of the Act at the earliest time practicable.

(*a*) Unlike the usual course of legislation, and particularly remedial legislation, which is adopted after long agitation and the usual process of investigation by legislative committees, sometimes of successive legislatures, Chapter 339 was conceived and adopted within one short session (of ninety days) of the Minnesota Legislature for 1933.

(*b*) The Act becomes effective at once and certain portions of it (Sec. 4. of Part One) even operated retroac-

tively and arbitrarily, and without any intervention of the parties to a mortgage or by the courts, extended to May 18, 1933, the period of redemption from prior mortgage foreclosure sales when the redemption period would otherwise expire less than thirty (30) days prior to that date.

(c) That the so-called "emergency" executive order of February 24, 1933, made by the Governor of the State, which order stayed the foreclosure of mortgages on homesteads until May 1, 1933, or until further order, was held invalid by the Supreme Court of the State of Minnesota in *State* v. *Moeller*, — Minn. —, 249 N. W. 330, as an attempt by the Executive to exercise legislative powers.

(d) That in the instant case, the appellees moved promptly by submitting within thirty (30) days of the passage of the Act, their petition for an extension of the redemption period under said Act; the case was advanced for hearing by the trial court and the relief sought was denied on May 16, 1933; the very next day a motion for new trial was made by the appellees and denied by the trial court on May 17, 1933; appeal was taken to the Supreme Court of the State, which also advanced the case for argument, and argument was had on May 26, 1933; the decision was handed down by the Supreme Court on July 7, 1933; on July 20, 1933, although the District Court was then on summer schedule and most of the judges absent on vacation, nevertheless, the case was again advanced by the trial court and heard on the merits on that date; findings were made on the next day, July 21, 1933, and judgment extending the redemption period to May 1, 1935, was entered; on the same day, appeal was taken to the State Supreme Court; and that court, although likewise on summer schedule, advanced the case and affirmed the judgment below on July 28, 1933.

5. There are a great number of cases pending in the courts of Minnesota, the decision of which will be affected by the determination of this case by this Court. That in the County of Hennepin alone, at the time the appeal herein was taken, there were on file approximately three hundred such applications under the Act, and that additional cases are being filed therein at the rate of three or four per day. That a great number of cases, in addition to those now pending in the courts of Minnesota, will be brought or will not be brought, and a great number of foreclosures will be disposed of, depending on the determination of this Court in this case. These matters are of vital importance not only to the persons directly and indirectly affected, but also to the State.

6. That in the event that this Honorable Court shall determine that said Chapter 339 is invalid, an early decision by this Court would have the following beneficial effects:

(*a*) The uncertainty and doubt referred to in paragraph 3, *supra*, would be removed.

(*b*) The great congestion and burden on the trial courts of the State would be removed and the necessity for trying a great number of proceedings under the Act in the first instance and any further time of the courts in subsequent proceedings thereunder would be avoided.

(*c*) Needless expense to the parties involved in all such proceedings under Chapter 339 would be avoided, and expense to the State involved in the maintenance and administration of justice would, likewise, be avoided, and those benefits would be reaped by all of the people of the State and particularly those paying taxes. It appears obvious that during the present times this economy is highly desirable.

(*d*) Additional delay in pending litigation, other than proceedings under the Act, would thus be avoided, which result is highly desirable because it is common knowledge that at the present time the course of justice and the trial of cases is seriously delayed by reason of the already congested calendars of the courts.

(*e*) Mortgagors generally and the class intended to be relieved by the Act would benefit because if the legislature of the State of Minnesota is thus found not to have had the authority to grant the relief intended to be given in the Act, such persons will no longer be misled into thinking they have such relief, and further, such persons will share in the benefits mentioned in paragraph (*c*), *supra*. They will also benefit by reason of the fact that if the validity of the obligation of debts secured by real estate mortgages is thus established, that mortgagees generally will be more willing to make loans, grant extensions, and otherwise compromise and settle pending claims.

(*f*) If such determination by this Court is made at an early date, the desirability or necessity for a special session of the legislature to devise other and lawful means to find relief, if any, during this emergency can be more quickly determined, and, perhaps, in time to take such steps, if any, during the coming winter when a session of the legislature could be more conveniently held and with less interference to the basic agricultural groups in the State; and also in order to furnish such relief, if any, at the earliest possible time during the economic depression.

7. And, finally, it is submitted that the court should advance this case for hearing because, even if the final determination made by this Court is that Chapter 339 is valid, an early decision would have the beneficial effect (*a*) of settling the law as stated in paragraph 3 *supra*; (*b*) the

State can more quickly set up whatever machinery is needed, if any, in addition to the trial courts, to administer the relief afforded by the Act; (*c*) in any event, the work imposed upon the courts pursuant to the Act can be more efficiently distributed among the courts; and (*d*) with due regard to the rights of other litigants in proceedings other than under Chapter 339, both in cases now pending and those hereafter brought; and (*e*) relief can be more efficiently and quickly given with absolute assurance that the same is not objectionable for the reasons urged in this proceeding.

Counsel feel, therefore, that in order to present adequately the argument before this Court, that time in addition to that allowed by rule 28, subdivision 4, should be allowed, but not to exceed a total of two hours; and that for the foregoing reasons, this Court should advance the case for early hearing and render its decision herein at the earliest time practicable.

WHEREFORE the appellant prays that this case be advanced upon the calendar and assigned for hearing at an early date, and that the time allowed for argument be increased, but not to exceed a total of two hours.

Dated August 17, 1933.

Respectfully submitted,

ALFRED W. BOWEN,
Counsel for Appellant.

Due and personal service of the foregoing motion is hereby admitted this 17th day of August, 1933.

Appellees state for the information of this Court at this time that they will not oppose the foregoing motion.

GEORGE T. SIMPSON,
Counsel for Appellees.